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12	UNITED STATES	DISTRICT COURT
13	NORTHERN DISTRI	CT OF CALIFORNIA
14		
15	TIMOTHY SMITH, ROHIT FEDANE, and MISTY JOHNSON, individually and on behalf of all others similarly situated,	Case No. 3:12-cv-04591-SC
16	Plaintiffs,	FIRST AMENDED CLASS ACTION
17	v.	COMPLAINT
18 19	CABOT CREAMERY COOPERATIVE, INC. and AGRI-MARK, INC.,	JURY TRIAL DEMANDED
20	Defendants.	
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28	FIRST AMENDED CLASS ACTION COMPLAINT	

CASE NO. C12-04591 SC

Plaintiffs Timothy Smith, Rohit Fedane, and Misty Johnson (collectively, "Plaintiffs") bring this action on behalf of themselves and all others similarly situated against Defendants Cabot Creamery Cooperative, Inc. ("Cabot") and Agri-Mark, Inc. ("Agri-Mark") (collectively, "Defendants"). Plaintiffs make the following allegations pursuant to the investigation of their counsel and based upon information and belief, except as to the allegations specifically pertaining to themselves, which are based on personal knowledge.

NATURE OF ACTION

- 1. This is a class action lawsuit on behalf of purchasers of Cabot Plain Greek-Style Yogurt, Lowfat Plain Greek-Style Yogurt, Lowfat Blueberry Greek-Style Yogurt, Lowfat Vanilla Bean Greek-Style Yogurt, Lowfat Strawberry Greek-Style Yogurt, Lowfat Black Cherry Greek-Style Yogurt, and Lowfat Peach Greek-Style Yogurt (collectively, "Cabot Greek-Style Yogurt" or "Cabot Greek"), which contain Whey Protein Concentrate ("WPC") and Milk Protein Concentrate ("MPC"). WPCs and MPCs are not Generally Recognized As Safe, and the FDA has specifically banned them from use as ingredients in yogurt. Because Cabot Greek contains these banned additives, as a matter of federal law it is <u>not</u> yogurt. It is adulterated, and it cannot legally be sold in the United States.
- 2. The manufacture of Greek yogurt is relatively expensive. It is created from straining the solids after the fermentation of milk, while regular yogurt keeps both the solids and the liquid. It takes one gallon of milk to produce a gallon of regular yogurt; but it takes four gallons of milk to produce one gallon of Greek yogurt. The result is a thick, protein-packed yogurt with a consistency like sour cream. Greek yogurt has nutritional advantages, as it is higher in protein and lower in sugar than regular yogurt.
- 3. But Cabot Greek is different, because it is not made the way Greek yogurt is supposed to be made. Instead of filtering out excess liquids, Defendants thicken Cabot Greek by adding WPCs and MPCs as filler materials. This results in a thicker product that appears to be Greek yogurt, but in fact is not yogurt at all.
- 4. Just as the mineral pyrite resembles gold, Cabot Greek resembles Greek yogurt. But fool's gold is not gold. And Cabot Greek is not yogurt.

5. Nevertheless, Defendants sell Cabot Greek as authentic Greek yogurt. Doing so enables them to charge a substantial price premium. Just as real gold commands a price premium over fool's gold, authentic Greek yogurt commands a higher price in the marketplace than regular yogurt. The price of Greek yogurt is usually double the price of regular yogurt. But the price premium for Cabot Greek is even larger, because Cabot Greek has no value whatsoever. Because the product is adulterated, it cannot legally be sold at any price. It is worthless.

6. Plaintiffs are purchasers of Cabot Greek who thought they were buying authentic Greek yogurt. They had no idea that they were sold an illegal, adulterated product that was not, in fact, yogurt. They assert claims on behalf of themselves and a nationwide class of purchasers of Cabot Greek, for breach of express warranty, breach of the implied warranty of merchantability, breach of the implied warranty of fitness for a particular purpose, unjust enrichment, violation of the California Consumer Legal Remedies Act ("CLRA"), violation of the California Unfair Competition Law ("UCL"), violation of the California False Advertising Law ("FAL"), negligent misrepresentation, and fraud.

PARTIES

- 7. Plaintiff Timothy Smith is a citizen of California who resides in Berkeley, California.
 - 8. Plaintiff Rohit Fedane is a citizen of California who resides in San Jose, California.
- 9. Plaintiff Misty Johnson is a citizen of California who resides in Riverside, California.
- 10. Defendant Cabot Creamery Cooperative, Inc. ("Cabot") is a Michigan corporation with its principal place of business in Montpelier, Vermont. Since 1919, Cabot manufactures and sells a variety of consumer dairy products, including cheddar cheese, Colby Jack cheese, cottage cheese, sour cream, whipped cream, butter, and Greek yogurt. In 1992, Defendant Agri-Mark acquired Cabot in a merger, which it now operates as a wholly-owned subsidiary. In 2011, Cabot had annual sales of \$450 million.
- 11. Defendant Agri-Mark, Inc. ("Agri-Mark") is a Delaware corporation with its principal place of business in Methuen, Massachusetts. Agri-Mark is a commercial distributor of

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whey protein concentrate, which it manufactures from its factory in Middlebury, Massachusetts. In 1992, Agri-Mark acquired Defendant Cabot in a merger, which it now operates as a wholly-owned subsidiary. In 2011, Agri-Mark and its subsidiaries had annual sales of \$900 million.

12. At all times relevant to the allegations in this matter, Defendants Cabot and Agri-Mark acted in concert, with the knowledge and approval of the other Defendant and/or as the agent of the other Defendant within the course and scope of the agency, regarding the acts and omissions alleged.

JURISDICTION AND VENUE

- 13. This Court has subject matter jurisdiction under 28 U.S.C. § 1331. This Court has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367.
- 14. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A) because this case is a class action where the aggregate claims of all members of the proposed class are in excess of \$5,000,000.00, exclusive of interest and costs, and Plaintiffs, as well as most members of the proposed class, are citizens of states different from the states of at least one of the Defendants. In 2006, annual sales of Greek yogurt in the U.S. were roughly \$60 million, accounting for only 0.7% of the domestic yogurt market. By 2011, U.S. sales of Greek yogurt had increased to \$1.5 billion a year, accounting for nearly 20% of the yogurt market. This means "that in just half a decade, one of the worst economic periods of the 20th century, sales of Greek yogurt grew 2500%." *Greek Yogurt Sales Rise* 2500% in Just Five Years, HUFFINGTON POST, Aug. 23, 2011, http://www.huffingtonpost.com/2011/08/23/greek-yogurt-sales_n_933986.html; see also Derek Thompson, How Did Greek Yogurt Get So Popular?, THE ATLANTIC, Aug. 23, 2011, http://www.theatlantic.com/business/archive/2011/08/how-did-greek-yogurt-get-so-popular/244025/. Sales of Cabot Greek comprised a substantial fraction of these sales.
- 15. Pursuant to 28 U.S.C. § 1391, this Court is the proper venue for this action because a substantial part of the events, omissions and acts giving rise to the claims herein occurred in this District. Plaintiffs are citizens of California, reside in this District, and purchased Cabot Greek

from Defendants in this District. Moreover, Defendants distributed, advertised, and sold Cabot Greek, which is the subject of the present complaint, in this District.

FACTS COMMON TO ALL CAUSES OF ACTION

How Regular Yogurt Is Made

- 16. Yogurt is a dairy product that is produced by the fermentation of milk. When certain types of food-grade bacteria are added to milk, they ferment the milk's lactose (milk sugar) to produce lactic acid. The lactic acid acidifies the milk, which causes it to coagulate and thicken. This acidity gives yogurt its tangy flavor. Yogurt has a longer shelf life than milk, as it is inhospitable to destructive bacteria.
- 17. Humans have consumed yogurt for thousands of years. Anthropologists and historians believe yogurt originated in Central Asia during the Neolithic age, probably around 5,000 B.C. in Mesopotamia. In this period, milk was stored in bags made from the stomach lining of domesticated animals, where naturally-occurring bacteria and digestive fluids resulted in fermentation. The oldest confirmed writing of yogurt dates to the First Century, when Pliny the Elder of Rome wrote that the "barbarous nations" understood "how to thicken milk and form therefrom an acrid kind of milk with a pleasant flavour." In the Eleventh and Twelfth Centuries, Genghis Khan sustained his armies on yogurt rations. More recently, yogurt was popularized in the United States in the 1950's and 1960's, where health-conscious consumers learned of its nutritional benefits.
- 18. Yogurt manufacturing today is simple and standardized. First, the milk's fat content is reduced. Second, the milk is heated and homogenized. This process pasteurizes the milk to remove harmful bacteria, and denatures the protein to prevent the creation of clumps (curds). Third, the milk is cooled to 109.4 to 114.8°F and food-grade bacterial cultures are added, typically *Lactobacillus delbrueckii* subsp. *bulgaricus* or *Streptococcus salivarius* subsp. *thermophilus*. Fourth, the temperature is maintained for three to four hours, and fermentation occurs. The bacteria consume lactose and produce lactic acid, which thickens and acidifies the milk. Finally, when the desired pH is achieved, the product is ready for packaging.

How Greek Yogurt Is Made

- 19. Greek yogurt is thicker than standard yogurt, with a consistency similar to sour cream.
- 20. To create Greek yogurt, manufacturers use filters to remove the whey, which is the liquid byproduct of yogurt and cheese manufacturing. Basically, regular yogurt keeps both the solid and liquid portions, while Greek yogurt keeps only the solid. Greek yogurt is higher in protein and lower in sugar than regular yogurt because the whey is removed.
- 21. Unfortunately, Cabot and Agri-Mark took a shortcut. Instead of making Greek yogurt by traditional methods, Cabot Greek is made with thickeners. Defendants added these cheap "filler" materials to avoid the expense of making real Greek yogurt.

Defendants Represent That Cabot Greek Is "Greek-Style YOGURT," But They Add Prohibited Ingredients To Cut Costs

Defendants Represent That Cabot Greek Is Greek Yogurt

22. Defendants represent that Cabot Greek is "Greek-Style YOGURT." This representation appears on the front of the package and on the top of the lid:



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2	consumer to believe that the product is,
3	24. Furthermore, the packag
4	surrounding the Cabot logo. This laure
5	laurel wreath is a staple of Grecian art a
6	ancient Greece to victors in poetic meet
7	(this is the origin of the phrase "to rest
8	Grecian laurel wreath to represent that
9	25. Cabot's website represen
10	about Cabot Greek, visitors must click
11	link entitled "Greek Yogurt." See Exhi
12	<u>Defendants Add Whey Protein (</u>
13	Cabot Greek, Thereby Reducing
14	26. An examination of Cabo
15	Protein Concentrate ("WPC") and Milk
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	23.	Additionally, the title of the product (i.e., "Cabot Greek") leads a reasonable
consu	mer to b	believe that the product is, in fact, Greek yogurt.

- 24. Furthermore, the package contains the familiar image of a Grecian laurel wreath surrounding the Cabot logo. This laurel wreath does not appear on Cabot's other products. The laurel wreath is a staple of Grecian art and history. For example, laurel wreaths were awarded in ancient Greece to victors in poetic meets and athletic competitions, including the ancient Olympics (this is the origin of the phrase "to rest on one's laurels"). Defendants intended the inclusion of a Grecian laurel wreath to represent that Cabot Greek is, in fact, authentic Greek yogurt.
- 25. Cabot's website represents that Cabot Greek is Greek yogurt. For example, to learn about Cabot Greek, visitors must click a hyperlink entitled "Quality Products," then click another link entitled "Greek Yogurt." *See* Exhibit A.

<u>Defendants Add Whey Protein Concentrate And Milk Protein Concentrate To Thicken</u> <u>Cabot Greek, Thereby Reducing The Costs Of Production</u>

26. An examination of Cabot Greek's ingredients reveals that Defendants add Whey Protein Concentrate ("WPC") and Milk Protein Concentrate ("MPC") to their yogurt:

Nutrition Facts

Serving Size 1 Cup (226g) Servings Per Container 4

Amount Per Serving	
Calories 290	Calories from Fat 210
	% Daily Value
Total Fat 23g	36%
Saturated Fat 15g	73%
Polyunsaturated Fat g	
Trans Fat 1g	
Cholesterol 75mg	26%
Sodium 105mg	4%
Total Carbohydrate 12g	4%
Dietary Fiber 0g	
Sugars 7g	
Protein 18g	
Vitamin A 25%	Vitamin C 25%
Vitamin D 25%	Vitamin E 25%
Calcium 30%	Iron 4%

Percent Daily Values are based on a 2,000 calorie diet.

Your daily values may be higher or lower depending on your calorie needs.

Ingredients

Pasteurized milk, cream, whey protein concentrate, milk protein concentrate, live active yogurt cultures (L. bulgaricus and S. thermophilus), Vitamins A,C,D,E.

- 27. Defendants add WPCs and MPCs to all seven varieties of their Greek yogurt: Plain Greek-Style Yogurt, Lowfat Plain Greek-Style Yogurt, Lowfat Blueberry Greek-Style Yogurt, Lowfat Vanilla Bean Greek-Style Yogurt, Lowfat Strawberry Greek-Style Yogurt, Lowfat Black Cherry Greek-Style Yogurt, and Lowfat Peach Greek-Style Yogurt. *See* Exhibit A.
- 28. WPCs and MPCs are typically created as a byproduct of cheese manufacturing. After separating the curds from the whey following fermentation, the resulting liquid was historically discarded. In modern times, the liquid whey is passed through an extremely fine filter. The filter strains water, minerals, and other organic materials but retains milk proteins, which are too large to pass through. Any remaining liquid is fully evaporated from these proteins. The resulting product is a mostly flavorless protein powder.
- 29. This resulting powder is called Whey Protein Concentrate if it primarily contains whey proteins. It is called Milk Protein Concentrate if it contains whey protein and casein proteins in the same proportion as it appears in cow's milk (about 20% and 80%, respectively). However,

MPCs and WPCs are not necessarily made from cow's milk. Manufacturers may need to add extra casein protein to arrive at the correct proportions.

- 30. MPCs and WPCs are often imported from foreign countries, including the Ukraine, India, China, Argentina, China, Poland, Australia, and New Zealand. Many of these countries have lower food standards than the U.S.
- 31. MPCs and WPCs are inexpensive. It is cheaper to add WPCs and MPCs to thicken yogurt, than it is to use more milk.
- 32. WPCs and MPCs are filler material. Instead of fully straining Cabot Greek to arrive at authentic Greek yogurt, Defendants simply add WPCs and MPCs to thicken their product and increase the protein content.
- 33. Defendants' conduct is not industry standard. The majority of yogurt brands in the U.S. do not add WPCs and MPCs.
- ach Defendant knowingly and intentionally committed the acts alleged herein. First, as discussed above, it is *not necessary* to add WPCs and MPCs to yogurt. Most domestic manufacturers do not add these ingredients, and there is no plausible reason why these ingredients are needed to make Greek yogurt. Second, Defendant Agri-Mark is a commercial manufacturer and distributor of WPCs, which it manufactures from its factory in Middlebury, Massachusetts. Defendant Agri-Mark warns purchasers on its site that, "*Purchaser is solely responsible for ensuring that product supplied is in conformity with all relevant food legislation* and should determine whether suggested data, formulations or procedures are suitable for their own purposes." *Agri-Mark Whey Protein Concentrate 80*, AGRI-MARK.COM, http://www.agrimarkwheyproteins.com/WPC.php (emphasis added) (attached hereto as Exhibit B). Based on information and belief, Defendant Agri-Mark includes this disclaimer because it is aware that adding WPCs to dairy products is prohibited by FDA regulations and federal law.
- 35. By adding WPCs and MPCs to their yogurt, Defendants deprive consumers of the benefit of their bargain. When consumers purchase Cabot Greek, they expect Greek yogurt. But

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they do not get Greek yogurt. They get a product that contains filler material, violates federal law, violates FDA regulations, and is not legal to sell in the U.S.

36. Furthermore, consumers are damaged by paying a price premium for supposedly Greek yogurt. The amount of the price premium can be reasonably quantified by an appropriate market study of the prices for comparable dairy products, or through a contingent valuation study, or through other means regularly employed by economic and valuation experts.

Cabot Greek Is Misbranded Because Adding WPCs And MPCs Violates The FDA's "Standard Of Identity" For Yogurt

The FDCA And FDA Standards Of Identity

- 37. The Federal Food, Drug, and Cosmetic Act ("FDCA") gives the FDA authority to regulate food products. Where "such action will promote honesty and fair dealing in the interest of consumers," the FDA may "promulgate regulations fixing and establishing for any food, under its common or usual name so far as practicable, a reasonable definition and standard of identity." 21 U.S.C. § 341.
- 38. The FDA's Standards of Identity define a category of foods, and specifies which ingredients may be used. The FDA has promulgated roughly 300 Standards of Identity in 20 categories of food. See generally 21 C.F.R. §§ 130-69. This includes all types of dairy products, bakery products, frozen desserts, cereal flours, macaroni products, fruit pies, eggs, and margarine. Id.
- 39. Any food that fails to comply with the Standards of Identity is "misbranded" under the FDCA. See 21 U.S.C. § 343 (g) (specifying that if a standard of identity exists, a food is "misbranded" unless "(1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard"). Furthermore, food is misbranded under the FDCA if "its labeling is false or misleading in any particular." 21 U.S.C. § 343(a).

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The FDA's Standard Of Identity For Yogurt Is An Exhaustive List Of Ingredients Permitted In Yogurt

- 40. In 1981, the FDA promulgated Standards of Identity for yogurt, lowfat yogurt, and nonfat yogurt. 21 C.F.R. §§ 131.200, 131.203, 131.206. They became effective on July 1, 1983. 46 Fed. Reg. 9924; 47 Fed. Reg. 41519.
- 41. The Standards of Identity for yogurt, lowfat yogurt, and nonfat yogurt are similar. They specify that, "Yogurt is the food produced by culturing one or more of the optional dairy ingredients specified in paragraph (c) of this section with a characterizing bacterial culture that contains the lactic acid-producing bacteria, *Lactobacillus bulgaricus* and *Streptococcus thermophilus*. One or more of the other optional ingredients specified in paragraphs (b) and (d) of this section may also be added. When one or more of the ingredients specified in paragraph (d)(1) of this section are used, they shall be included in the culturing process. All ingredients used [must be] safe and suitable." 21 C.F.R. § 131.200(a).
- 42. The "optional dairy ingredients" that may be cultured under paragraph (c) are, "Cream, milk, partially skimmed milk, or skim milk, used alone or in combination." 21 C.F.R. § 131.200(c). Paragraph (b) permits the addition of vitamin A and D. Paragraph (d) permits the addition of a number of assorted ingredients, including, "(1) Concentrated skim milk, nonfat dry milk, buttermilk, whey, lactose, lactalbumins, lactoglobulins, or whey modified by partial or complete removal of lactose and/or minerals.... (2) Nutritive carbohydrate sweeteners. Sugar (sucrose), beet or cane; invert sugar (in paste or sirup form); brown sugar; refiner's sirup; molasses (other than blackstrap); high fructose corn sirup; fructose; fructose sirup; maltose; maltose sirup, dried maltose sirup; malt extract, dried malt extract; malt sirup, dried malt sirup; honey; maple sugar.... (3) Flavoring ingredients. (4) Color additives. (5) Stabilizers." 21 C.F.R. § 131.200(d).
- 43. In totality, the Standard of Identity for yogurt is an *exclusive list* of ingredients that may be added to yogurt. If "yogurt" contains any ingredient not on that list, as a matter of federal law it is <u>not</u> yogurt, and it is misbranded. 21 C.F.R. §§ 131.200, 131. 203, 131.206; 21 U.S.C. § 343 (a), (g).

The FDA's Standard Of Identity For Yogurt Prohibits The Addition Of WPCs And MPCs

The FDA's Standard of Identity for yogurt does not list WPCs or MPCs in the list of

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permitted ingredients. In fact, both are specifically prohibited.

to Kraft Foods North America Inc.,

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- 45. The FDA has specifically banned the use of WPCs and MPCs in yogurt. *See* 74 Fed. Reg. 2443, 2452-53 (2009) ("[T]he current standard makes no allowance for the use of whey protein concentrate as a basic ingredient in yogurt."); *see also* Dec. 18, 2002 FDA Warning Letter
- http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2002/ucm145363.htm (accessed July 30, 2012) ("The use of milk protein concentrate in these products constitutes a violation of Section 403(g)(1) of the Act because the products are represented as foods for which standards of identity have been prescribed by regulation and the use of milk protein concentrate in these products does not conform to the standards.").
- Cabot Greek Is Adulterated Because WPCs and MPCs Are Not "Generally Recognized As Safe" By The FDA
- 46. Under the FDCA, food additives must be Generally Recognized As Safe ("GRAS") by the FDA.
- 47. If the FDA has not made a GRAS determination, manufacturers may use the additive if and only if they conduct an internal self-determination and submit their evidence to the FDA, including the manufacturer's own scientific evidence.
- 48. Any food containing an additive that has not followed these producers is adulterated under the FDCA, which defines food additives as "all substances ... the intended use of which results or may reasonably be expected to result ... in their becoming a component or food otherwise affecting the characteristic of food." 21 U.S.C. § 321(s).
- 49. WPCs and MPCs do not have GRAS status. Neither is found in the FDA's Database of Select Committee on GRAS Substances (SCOGS) Reviews.
- 50. Because MPCs do not appear in the FDA's GRAS Notice Inventory, no manufacturer has conducted an internal self-determination of MPCs, nor has the FDA ever

received a manufacturer's self-determination. Furthermore, MPCs do not appear in the FDA's larger list of food additives, Everything Added to Food in the United States ("EAFUS").

51. Because Cabot Greek contains unapproved additives, it is adulterated. It violates the FDCA and applicable regulations thereunder.

Plaintiffs' Purchase Of Cabot Greek

- 52. Plaintiff Timothy Smith purchased Cabot Greek-Style Yogurt in 2012 from local supermarkets near his home in Berkeley, California.
- 53. Plaintiff Rohit Fedane purchased Cabot Greek-Style Yogurt from local supermarkets near his home in San Jose, California.
- 54. Plaintiff Misty Johnson purchased Cabot Greek-Style Yogurt from local supermarkets near her home in Riverside, California.
- 55. Cabot Greek's label identifies the product as "Greek-Style YOGURT" in two places: on the front of the package and on the top of the lid. Plaintiffs read and understood these representations and believed they were purchasing (i) yogurt (ii) that was in fact Greek yogurt, (iii) that was not adulterated, and (iv) that was legal for sale in the United States.
- 56. Plaintiffs relied on these representations and warranties in deciding whether to purchase Cabot Greek, and these representations and warranties were part of the basis of the bargain, in that they would not have purchased Cabot Greek if they had known that any of the these representations were false.
- 57. Plaintiffs also understood that in making the sale, the retailer was acting with the knowledge and approval of Defendants and/or as the agent of Defendants. They understood that the purchase involved a direct transaction between themself and Defendants, because Cabot Greek's packaging contains promises and representations by Defendants regarding the nature and quality of the product.
- 58. Plaintiffs purchased a misbranded product that is not legal to sell in the United States. They also paid a price premium due to Cabot Greek's purported status as a Greek yogurt product, as well as its purported status as a lowfat yogurt product. The amount of the price premium can be reasonably quantified by an appropriate market study of the prices for comparable

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27 28 dairy products, or through a contingent valuation study, or through other means regularly employed by economic and valuation experts.

CLASS REPRESENTATION ALLEGATIONS

- 59. Plaintiffs seek to represent a class defined as all persons in the United States who purchased Cabot Greek (the "Class"). Excluded from the Class are persons who made such purchase for purpose of resale.
- 60. Plaintiffs also seek to represent a subclass of all Class members who purchased Cabot Greek in California (the "California Subclass").
- 61. Members of the Class and Subclass are so numerous that their individual joinder herein is impracticable. On information and belief, members of the Class and Subclass number in the hundreds of thousands. The precise number of Class members and their identities are unknown to Plaintiffs at this time but may be determined through discovery. Class members may be notified of the pendency of this action by mail and/or publication through the distribution records of Defendants and third party retailers and vendors.
- 62. Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to whether Defendants warranted that Cabot Greek (i) was yogurt, (ii) was in fact Greek yogurt, (iii) was not adulterated, and (iv) was legal for sale in the United States; whether Defendants breached those warranties; and whether defendants committed statutory and common law fraud by doing so.
- 63. The claims of the named Plaintiffs are typical of the claims of the Class in that the named Plaintiffs purchased Cabot Greek in reliance on the representations and warranties described above, and suffered a loss as a result of that purchase.
- 64. Plaintiffs are an adequate representative of the Class and Subclass because their interests do not conflict with the interests of the Class members they seek to represent, they have retained competent counsel experienced in prosecuting class actions, and they intend to prosecute this action vigorously. The interests of Class members will be fairly and adequately protected by Plaintiffs and their counsel.

65. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Class and Subclass members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendants' liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendants' liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

COUNT I

Breach Of Express Warranty

- 66. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.
- 67. Plaintiffs bring this claim individually and on behalf of the members of the proposed Class against all Defendants.
- 68. Defendants, as the designer, manufacturer, marketers, distributors, and/or sellers expressly warranted that Cabot Greek was fit for its intended purpose by representing that Cabot Greek (i) was yogurt, (ii) was in fact Greek yogurt, (iii) was not adulterated, and (iv) was legal for sale in the United States.
- 69. In fact, Cabot Greek is not fit for such purposes because each of these express warranties is false. Particularly, Cabot Greek (i) is not yogurt, (ii) is not Greek yogurt, (iii) is adulterated, and (iv) is illegal for sale in the United States.
- 70. As a direct and proximate cause of Defendants' breach of express warranty,
 Plaintiffs and Class members have been injured and harmed because: (a) they would not have
 purchased Cabot Greek on the same terms if the true facts were known concerning its
 manufacturing, ingredients, status as a yogurt product, and failure to comply with FDA regulations;

(b) they paid a price premium for Cabot Greek due to its supposed status as "Greek-Style YOGURT;" and (c) Cabot Greek did not have the quality, functionality, or value as promised.

- 71. On August 30, 2012, prior to the filing of this Complaint, a notice letter was served on Defendant Cabot which complies in all respects with Cal. Com. Code § 2607. Plaintiff Smith sent Cabot a letter via certified mail, return receipt requested, advising Cabot that it was in violation of California warranty law and must correct, repair, replace or otherwise rectify the goods alleged to be in violation. A true and correct copy of Plaintiff Smith's letter is attached hereto as Exhibit C.
- 72. On September 4, 2012, prior to the filing of this Complaint, a notice letter was served on Defendant Cabot which complies in all respects with Cal. Com. Code § 2607. Plaintiff Fedane sent Cabot a letter via certified mail, return receipt requested, advising Cabot that it was in violation of California warranty law and must correct, repair, replace or otherwise rectify the goods alleged to be in violation. A true and correct copy of Plaintiff Fedane's letter is attached hereto as Exhibit D.
- 73. On September 6, 2012, prior to the filing of this Complaint, a notice letter was served on Defendant Cabot which complies in all respects with Cal. Com. Code § 2607. Plaintiff Johnson sent Cabot a letter via certified mail, return receipt requested, advising Cabot that it was in violation of California warranty law and must correct, repair, replace or otherwise rectify the goods alleged to be in violation. A true and correct copy of Plaintiff Johnson's letter is attached hereto as Exhibit E.

COUNT II

Breach Of Implied Warranty Of Merchantability

- 74. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.
- 75. Plaintiffs bring this claim individually and on behalf of the members of the proposed Class against all Defendants.

- 76. Defendants as the designer, manufacturer, marketers, distributors, and/or sellers impliedly warranted that Cabot Greek was fit for its intended purpose in that it (i) was yogurt, (ii) was in fact Greek yogurt, (iii) was not adulterated, and (iv) was legal for sale in the United States.
- 77. Defendants breached the warranty implied in the contract for the sale of Cabot Greek because it could not pass without objection in the trade under the contract description, the goods were not of fair average quality within the description, and the goods were unfit for their intended and ordinary purpose because Cabot Greek (i) is not yogurt, (ii) is not Greek yogurt, (iii) is adulterated, and (iv) is illegal for sale in the United States. As a result, Plaintiffs and Class members did not receive the goods as impliedly warranted by Defendants to be merchantable.
- 78. In reliance upon Defendants' skill and judgment and the implied warranties of fitness for the purpose, Plaintiffs and Class members purchased Cabot Greek as a Greek-style yogurt.
 - 79. Cabot Greek was not altered by Plaintiffs or Class members.
 - 80. Cabot Greek was defective when it left the exclusive control of Defendants.
- 81. Defendants knew that Cabot Greek would be purchased and used without additional testing by Plaintiffs and Class members.
- 82. Cabot Greek was defectively designed and unfit for its intended purpose, and Plaintiffs and Class members did not receive the goods as warranted.
- 83. As a direct and proximate cause of Defendants' breach of the implied warranty, Plaintiffs and Class members have been injured and harmed because: (a) they would not have purchased Cabot Greek on the same terms if the true facts were known concerning its manufacturing, ingredients, status as a yogurt product, and failure to comply with FDA regulations; (b) they paid a price premium for Cabot Greek due to its supposed status as "Greek-Style YOGURT;" and (c) Cabot Greek did not have the quality, functionality, or value as promised.

COUNT III

Breach Of Implied Warranty Of Fitness For A Particular Purpose

84. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

- 85. Plaintiffs bring this claim individually and on behalf of the members of the proposed Class against all Defendants.
- 86. Defendants marketed, distributed, and/or sold Cabot Greek with implied warranties that it was fit for its intended purposes in that it (i) was yogurt, (ii) was in fact Greek yogurt, (iii) was not adulterated, and (iv) was legal for sale in the United States. At the time that Cabot Greek was sold, Defendants knew or had reason to know that Plaintiffs and Class members were relying on Defendants' skill and judgment to select or furnish a product that was suitable for sale as Greek yogurt.
- 87. In reliance upon Defendants' implied warranties, Plaintiffs and Class members purchased Cabot Greek because they believed that it was Greek yogurt.
 - 88. Cabot Greek was not altered by Plaintiffs or Class members.
- 89. As a direct and proximate cause of Defendants' breach of the implied warranty, Plaintiffs and Class members have been injured and harmed because: (a) they would not have purchased Cabot Greek on the same terms if the true facts were known concerning its manufacturing, ingredients, status as a yogurt product, and failure to comply with FDA regulations; (b) they paid a price premium for Cabot Greek due to its supposed status as "Greek-Style YOGURT;" and (c) Cabot Greek did not have the quality, functionality, or value as promised.

COUNT IV

Unjust Enrichment

- 90. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.
- 91. Plaintiffs bring this claim individually and on behalf of the members of the proposed Class against all Defendants.
- 92. Plaintiffs and Class members conferred benefits on Defendants by purchasing Cabot Greek.
- 93. Defendants have been unjustly enriched in retaining the revenues derived from Plaintiffs and Class members' purchases of Cabot Greek. Retention of those moneys under these circumstances is unjust and inequitable because Defendants misrepresented that Cabot Greek was

because: (a) they would not have purchased Cabot Greek on the same terms if the true facts were

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1	known concerning its manufacturing, ingredients, status as a yogurt product, and failure to comply
2	with FDA regulations; (b) they paid a price premium for Cabot Greek due to its supposed status as
3	"Greek-Style YOGURT;" and (c) Cabot Greek did not have the quality, functionality, or value as
4	promised.
5	103. On or about August 30, 2012, prior to filing this action, a CLRA notice letter was
6	served on Defendants which complies in all respects with California Civil Code § 1782(a).
7	Plaintiff Smith sent Cabot a letter via certified mail, return receipt requested, advising Cabot that it
8	is in violation of the CLRA and demanding that it cease and desist from such violations and make
9	full restitution by refunding the monies received therefrom. A true and correct copy of Plaintiff
10	Smith's letter is attached hereto as Exhibit C.
11	104. On or about September 4, 2012, prior to filing this action, a CLRA notice letter was
12	served on Defendants which complies in all respects with California Civil Code § 1782(a).
13	Plaintiff Fedane sent Cabot a letter via certified mail, return receipt requested, advising Cabot that
14	it is in violation of the CLRA and demanding that it cease and desist from such violations and
15	make full restitution by refunding the monies received therefrom. A true and correct copy of
16	Plaintiff Fedane's letter is attached hereto as Exhibit D.
17	105. On or about September 6, 2012, prior to filing this action, a CLRA notice letter was
18	served on Defendants which complies in all respects with California Civil Code § 1782(a).
19	Plaintiff Johnson sent Cabot a letter via certified mail, return receipt requested, advising Cabot that
20	it is in violation of the CLRA and demanding that it cease and desist from such violations and
21	make full restitution by refunding the monies received therefrom. A true and correct copy of
22	Plaintiff Johnson's letter is attached hereto as Exhibit E.
23	106. Wherefore, Plaintiffs seek damages, restitution, and injunctive relief for this
24	violation of the CLRA.
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COUNT VI

Violation Of California's Unfair Competition Law ("UCL"), California Business & Professions Code §§ 17200, et seq.

- 107. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.
- 108. Plaintiffs bring this claim individually and on behalf of the members of the proposed California Subclass against all Defendants.
- 109. Defendants are subject to the Unfair Competition Law ("UCL"), Bus. & Prof. Code §§ 17200 *et seq.* The UCL provides, in pertinent part: "Unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising"
- 110. Defendants' misrepresentations and other conduct, described herein, violated the "unlawful" prong of the UCL by violating the CLRA as described herein; the FAL as described herein; and Cal. Com. Code § 2607.
- 111. Defendants' misrepresentations and other conduct, described herein, violated the "unfair" prong of the UCL in that their conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive and unscrupulous as the gravity of the conduct outweighs any alleged benefits.
- 112. Defendants' conduct, described herein, violated the "fraudulent" prong of the UCL by making misrepresentations about Cabot Greek.
- 113. Plaintiffs and the California Subclass lost money or property as a result of Defendants' UCL violations because: (a) they would not have purchased Cabot Greek on the same terms if the true facts were known concerning its manufacturing, ingredients, status as a yogurt product, and failure to comply with FDA regulations; (b) they paid a price premium for Cabot Greek due to its supposed status as "Greek-Style YOGURT;" and (c) Cabot Greek did not have the quality, functionality, or value as promised.

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COUNT VII

Violation Of California's False Advertising Law ("FAL"),

Calif. Business & Professions Code §§17500, et seq.

- 114. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.
- 115. Plaintiffs bring this claim individually and on behalf of the members of the proposed California Subclass against all Defendants.
- 116. California's False Advertising Law, Bus. & Prof. Code §§ 17500, et seq., makes it "unlawful for any person to make or disseminate or cause to be made or disseminated before the public in this state, ... in any advertising device ... or in any other manner or means whatever, including over the Internet, any statement, concerning ... personal property or services, professional or otherwise, or performance or disposition thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading."
- 117. Defendants committed acts of false advertising, as defined by §17500, by misrepresenting that Cabot Greek (i) was yogurt, (ii) was in fact Greek yogurt, (iii) was not adulterated, and (iv) was legal for sale in the United States.
- 118. Defendants knew or should have known, through the exercise of reasonable care that their representations about Cabot Greek were untrue and misleading.
- 119. Defendants' actions in violation of § 17500 were false and misleading such that the general public is and was likely to be deceived.
- 120. Plaintiffs and the California Subclass lost money or property as a result of Defendants' FAL violations because: (a) they would not have purchased Cabot Greek on the same terms if the true facts were known concerning its manufacturing, ingredients, status as a yogurt product, and failure to comply with FDA regulations; (b) they paid a price premium for Cabot Greek due to its supposed status as "Greek-Style YOGURT;" and (c) Cabot Greek did not have the quality, functionality, or value as promised.

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COUNT VIII

Negligent Misrepresentation

- 121. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.
- 122. Plaintiffs bring this claim individually and on behalf of the members of the proposed Class against all Defendants.
- 123. As discussed above, Defendants represented that Cabot Greek was "Greek-Style YOGURT" but failed to disclose that it (i) is not yogurt, (ii) is not Greek yogurt, (iii) is adulterated, and (iv) is illegal for sale in the United States. Defendants had a duty to disclose this information.
- 124. At the time Defendants made these representations, Defendants knew or should have known that these representations were false or made them without knowledge of their truth or veracity.
- 125. At an absolute minimum, Defendants negligently misrepresented and/or negligently omitted material facts about Cabot Greek.
- 126. The negligent misrepresentations and omissions made by Defendants, upon which Plaintiffs and Class members reasonably and justifiably relied, were intended to induce and actually induced Plaintiffs and Class members to purchase Cabot Greek.
- 127. Plaintiffs and Class members would not have purchased Cabot Greek if the true facts had been known.
- 128. The negligent actions of Defendants caused damage to Plaintiffs and Class members, who are entitled to damages and other legal and equitable relief as a result.

COUNT IX

Fraud

- 129. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.
- 130. Plaintiffs bring this claim individually and on behalf of the members of the proposed Class against all Defendants.

1	DEMAND FOR TRIAL BY JURY	
2	Plaintiffs demand a trial by	y jury of all issues so triable.
3		
4	Dated: October 9, 2012	Respectfully submitted,
5		BURSOR & FISHER, P.A.
6		
7		By: <u>/s/ L. Timothy Fisher</u> L. Timothy Fisher
8		L. Timothy Fisher (State Bar No. 191626)
9		Sarah N. Westcot (State Bar No. 264916) 1990 North California Boulevard, Suite 940
10		Walnut Creek, CA 94596 Telephone: (925) 300-4455
11		Facsimile: (925) 407-2700
12		E-Mail: ltfisher@bursor.com swestcot@bursor.com
13		BURSOR & FISHER, P.A.
14		Scott A. Bursor (State Bar No. 276006) 888 Seventh Avenue
15		New York, NY 10019 Telephone: (212) 989-9113
16		Facsimile: (212) 989-9163 E-Mail: scott@bursor.com
17		Attorneys for Plaintiffs
18		
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I, Timothy Smith, declare as follows:

- I am a plaintiff in this action and a citizen of the State of California. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would testify competently thereto.
- The complaint filed in this action is filed in the proper place for trial under California Civil Code Section 1780(d) in that Defendants conduct a substantial amount of business in this District.
- 3. While living in California, I purchased Cabot Greek for personal consumer use. I read the label on Cabot Greek, and purchased it in reliance on the claims that I was purchasing (i) yogurt (ii) that was in fact Greek yogurt, (iii) that was not adulterated, and (iv) that was legal for sale in the United States. I would not have purchased Cabot Greek had I known the true facts concerning its manufacturing, ingredients, status as a yogurt product, and failure to comply with FDA regulations.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct, executed on August 2, 2012 at Walnut Creek, California.

TIMOTHY SMITH

I, Rohit Fedane, declare as follows:

- 1. I am a plaintiff in this action and a citizen of the State of California. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would testify competently thereto.
- 2. The complaint filed in this action is filed in the proper place for trial under California Civil Code Section 1780(d) in that Defendants conduct a substantial amount of business in this District.
- 3. While living in California, I purchased Cabot Greek for personal consumer use. I read the label on Cabot Greek, and purchased it in reliance on the claims that I was purchasing (i) yogurt (ii) that was in fact Greek yogurt, (iii) that was not adulterated, and (iv) that was legal for sale in the United States. I would not have purchased Cabot Greek had I known the true facts concerning its manufacturing, ingredients, status as a yogurt product, and failure to comply with FDA regulations.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct, executed on September 4, 2012 at Saw Joseph, California.



OWNED BY OUR FARM FAMILIES IN NEW YORK & NEW ENGLAND

We're Cabot | Quality Products | Recipes & Pairings | Your Health | Healthy Schools & Groups | Visit Us | Shop Online

Classic Cheddar Specialty Aged Cheddar Flavored Cheddar Reduced Fat Cheddar Other Cheeses Greek Yogurt Other Products

Quicklinks Store Finder Cabot e-Newsletter FAQs HUNGRY? SEARCH RECIPES BY MEAL TYPE Select a category

THE BEST OF VERMONT SHOWCASE

Cheese

- Classic Cheddar
- Specialty Aged Cheddar
- Flavored Cheddar
- Reduced Fat Cheddar
- Other Cheeses

Greek Yogurt

Plain Lowfat Plain Lowfat Blueberry Lowfat Vanilla Bean Lowfat Strawberry Lowfat Black Cherry Lowfat Peach

Other Products

- Cream Cheese
- Whipped Cream
- Cottage Cheese
- Dips
- Sour Cream
- Butter
- Nonfat Yogurt

Lowfat Plain Lowfat Blueberry Lowfat Vanilla Bean Lowfat Strawberry Lowfat Black Cherry Lowfat Peach

Plain Greek-Style Yogurt

Greek-Style Yogurt is a thick, creamy, decadent yogurt that is equally enjoyable by itself, as a rub, or as an ingredient in rich, creamy sauces, dips or main dishes. Greek-Style Yogurt has countless uses as an ingredient in recipes. It can be used for baking, as a substitute for sour cream or cream, or as a base for dips and sauces.





Product Options

1 LB 2 LBS

Product F	AQ		
Recipes			
Store Find	ег		
Sea	rch by Product	Sear	rch by Location
Product Typ	e:	City:	
Plain Greek-	Style Yogurt 🔻		
Options:	Any ▼	State:	
			•
Zip Code:		Distance:	Less than 10 Miles -

If you can't find what you're looking for, ask your local store manager to begin

Nutrition Facts

Serving Size 1 Cup (226g) Servings Per Container 2

Amount Per Serving	
Calories 290	Calories from Fat 210
	% Daily Value
Total Fat 23g	36%
Saturated Fat 15g	73%
Polyunsaturated Fat g	
Trans Fat 1g	
Cholesterol 75mg	26%
Sodium 105mg	4%
Total Carbohydrate 12g	4%
Dietary Fiber 0g	
Sugars 7g	
Protein 18g	
1/21 A 050/	VII 0.050V
Vitamin A 25%	Vitamin C 25%

Percent Daily Values are based on a 2,000 calorie

Your daily values may be higher or lower depending on your calorie needs.

Ingredients

Vitamin D 25%

Calcium 30%

Pasteurized milk, cream, whey protein concentrate, milk protein concentrate, live active yogurt cultures (L. bulgaricus and S. thermophilus), Vitamins A,C,D,E.











Vitamin E 25%

Iron 4%

carrying Cabot products.





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We're Cabot | Quality Products | Recipes & Pairings | Your Health | Healthy Schools & Groups | Visit Us | Shop Online

Classic Cheddar Specialty Aged Cheddar Flavored Cheddar Reduced Fat Cheddar Other Cheeses Greek Yogurt Other Products

Quicklinks Store Finder Cabot e-Newsletter FAQs HUNGRY? SEARCH RECIPES BY MEAL TYPE Select a category

VERMONT SHOWCASE

Cheese

- Classic Cheddar
- Specialty Aged Cheddar
- Flavored Cheddar
- Reduced Fat Cheddar
- Other Cheeses

Greek Yogurt

Plain
Lowfat Plain
Lowfat Blueberry
Lowfat Vanilla Bean
Lowfat Strawberry
Lowfat Black Cherry
Lowfat Peach

Other Products

- Cream Cheese
- ▶ Whipped Cream
- Cottage Cheese
- ▶ Dips
- Sour Cream
- Butter
- Nonfat Yogurt

Plain Lowfat Plain Lowfat Blueberry Lowfat Vanilla Bean Lowfat Strawberry Lowfat Black Cherry Lowfat Peach

Lowfat Plain Greek-Style Yogurt

Greek-Style Yogurt is a thick, creamy, decadent yogurt that is equally enjoyable by itself, as a rub, or as an ingredient in rich, creamy sauces, dips or main dishes. Greek-Style Yogurt has countless uses as an ingredient in recipes. It can be used for baking, as a substitute for sour cream or cream, or as a base for dips and sauces. Made from 2% lowfat milk.

£Like < 9



Product Options

1 LB 2 LBS

Product F	AQ			
Recipes				
Store Find	ler			
Coo	nah hy: Duaduat	Cont	ah bu Lasatian	
Sea	reh by Product	Seal	rch by Location	
Product Typ	e:	City:		
	e: Greek-Style Yogurt	City:		
		City:]
Lowfat Plain	Greek-Style Yogurt		Less than 10 Miles	•

If you can't find what you're looking for, ask your local store manager to begin carrying Cabot products.

Nutrition Facts

Serving Size 1 cup (226g) Servings Per Container 2

Amount Per Serving	
Calories 150	Calories from Fat 45
	% Daily Value
Total Fat 5g	7%
Saturated Fat 3g	15%
Polyunsaturated Fat g	
Trans Fat 0g	
Cholesterol 35mg	11%
Sodium 120mg	5%
Total Carbohydrate 11g	4%
Dietary Fiber 0g	
Sugars 11g	
Protein 22g	
Vitarria A OFO/	Vitai- 0 050/
Vitamin A 25%	Vitamin C 25%

Percent Daily Values are based on a 2,000 calorie

Your daily values may be higher or lower depending on your calorie needs.

Ingredients

Vitamin D 25%

Calcium 40%

Pasteurized milk, skim milk, whey protein concentrate, milk protein concentrate, pectin, live active yogurt cultures (L. bulgaricus and S. thermophilus), enzymes, Vitamins A,C,D,E.











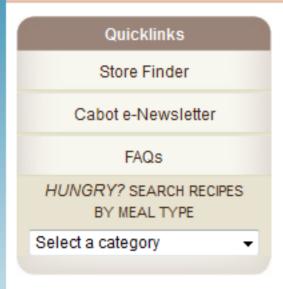




Vitamin E 25%

Iron 6%

Classic Cheddar Specialty Aged Cheddar Flavored Cheddar Reduced Fat Cheddar Other Cheeses Greek Yogurt Other Products



THE BEST OF VERMONT

Cheese

- Classic Cheddar
- Specialty Aged Cheddar
- Flavored Cheddar
- Reduced Fat Cheddar
- Other Cheeses

Greek Yogurt

Plain

Lowfat Plain Lowfat Blueberry Lowfat Vanilla Bean Lowfat Strawberry Lowfat Black Cherry Lowfat Peach

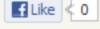
Other Products

- Cream Cheese
- Whipped Cream
- Cottage Cheese
- Dips
- Sour Cream
- Butter
- Nonfat Yogurt

Lowfat Blueberry Lowfat Vanilla Bean Lowfat Strawberry Lowfat Black Cherry Lowfat Peach Lowfat Plain

Lowfat Blueberry Greek-Style Yogurt

Rich, creamy, and bursting-with-blueberries delicious. Cabot's new Lowfat Blueberry Greek-Style Yogurt is so good it's "as tempting as a siren's call." And so good for you, too made from 2% low-fat milk, every luscious, protein-rich spoonful is fortified with vitamins A, C, D and E.





Product Options

1 LB 2 LBS

Store Find	er		
Sear	rch by Product	Sear	rch by Location
Product Type	e:	City:	
Lowfat Blueb	erry Greek-Style Yogurt 🔻		
Options:	Any ▼	State:	-
Zip Code:		Distance:	Less than 10 Miles ▼
	Submit		Submit

If you can't find what you're looking for, ask your local store manager to begin carrying Cabot products.

Nutrition Facts

Serving Size 1 Cup (226g) Servings Per Container 2

t 40
llue
6%
3%
0%
8%
5%
1%
0%
6%
0%
0%
5%
0%

Percent Daily Values are based on a 2,000 calorie

Your daily values may be higher or lower depending on your calorie needs.

Ingredients

Lowfat yogurt [Pasteurized milk, skim milk, whey protein concentrate, milk protein concentrate, live active yogurt cultures (Acidophilus, Bifidus, L. bulgaricus and S. thermophilus), enzymes, Vitamins A,C,D,E], Blueberry flavoring [Sugar, blueberries, water, modified corn starch, natural flavors, pectin,concentrated lemon juice].















Classic Cheddar Specialty Aged Cheddar Flavored Cheddar Reduced Fat Cheddar Other Cheeses Greek Yogurt Other Products

Quicklinks Store Finder Cabot e-Newsletter FAQs **HUNGRY? SEARCH RECIPES** BY MEAL TYPE Select a category

THE BEST OF VERMONT

Cheese

- Classic Cheddar
- Specialty Aged Cheddar
- Flavored Cheddar
- Reduced Fat Cheddar
- Other Cheeses

Greek Yogurt

Plain Lowfat Plain Lowfat Blueberry Lowfat Vanilla Bean Lowfat Strawberry Lowfat Black Cherry Lowfat Peach

Other Products

- Cream Cheese
- Whipped Cream
- Cottage Cheese
- Dips
- Sour Cream
- Butter
- Nonfat Yogurt

Lowfat Blueberry Lowfat Vanilla Bean Lowfat Strawberry Lowfat Black Cherry Lowfat Peach

Lowfat Vanilla Bean Greek-Style Yogurt

Cabot's Greek-Style Yogurt makes a healthy protein-rich treat when blended with fresh fruits for quick and yummy smoothies. Use our lowfat Vanilla Bean, because vanilla just seems to make fruit flavors bloom. Made from 2% lowfat milk.





Product Options

1 LB 2 LBS

Product FA	AQ.		
Store Find	ег		
Sear	reh by Product	Sear	rch by Location
Product Typ	e:	City:	
Lowfat Vanill	a Bean Greek-Style Yog. 🔻		
Options:	Any ▼	State:	•
Zip Code:		Distance:	Less than 10 Miles ▼
	Submit		Submit

If you can't find what you're looking for, ask your local store manager to begin carrying Cabot products.

Nutrition Facts

Serving Size 1 Cup (226g) Servings Per Container 2

Amount Per Serving	
Calories 220	Calories from Fat 35
	% Daily Value
Total Fat 4g	6%
Saturated Fat 2.5g	12%
Polyunsaturated Fat g	
Trans Fat 0g	0%
Cholesterol 25mg	9%
Sodium 100mg	4%
Total Carbohydrate 33g	11%
Dietary Fiber 0g	
Sugars 32g	
Protein 18g	
Vitamin A 20%	Vitamin C 20%
Vitamin D 20%	Vitamin E 20%
Calcium 35%	Iron 6%

Percent Daily Values are based on a 2,000 calorie

Your daily values may be higher or lower depending on your calorie needs.

Ingredients

Lowfat yogurt [Pasteurized milk, skim milk, whey protein concentrate, milk protein concentrate, pectin, live active yogurt cultures (L. bulgaricus and S. thermophilus), enzymes, Vitamins A,C,D,E.],Vanilla Bean flavoring [Sugar, water, natural flavors, modified corn starch, pectin, vanilla bean seeds, annatto (color)].















Classic Cheddar Specialty Aged Cheddar Flavored Cheddar Reduced Fat Cheddar Other Cheeses Greek Yogurt Other Products

Quicklinks Store Finder Cabot e-Newsletter FAQs **HUNGRY? SEARCH RECIPES** BY MEAL TYPE Select a category

THE BEST OF VERMONT

Cheese

- Classic Cheddar
- Specialty Aged Cheddar
- Flavored Cheddar
- Reduced Fat Cheddar
- Other Cheeses

Greek Yogurt

Plain Lowfat Plain Lowfat Blueberry Lowfat Vanilla Bean Lowfat Strawberry Lowfat Black Cherry Lowfat Peach

Other Products

- Cream Cheese
- Whipped Cream
- Cottage Cheese
- Dips
- Sour Cream
- Butter
- Nonfat Yogurt

Lowfat Plain Lowfat Blueberry Lowfat Vanilla Bean Lowfat Strawberry Lowfat Black Cherry Lowfat Peach

Lowfat Strawberry Greek-Style Yogurt

Cabot's new Strawberry Greek-Style Yogurt is going to be your favorite breakfast, lunch and mid-afternoon snack. Strawberry is America's #1 yogurt flavoring, and Cabot's Greek-Style Yogurt is so thick, creamy and decadently delicious that you may not believe it's made from 2% lowfat milk. Spoon it up and enjoy!





Product Options

1 LB 2 LBS

Product FA	AQ		
Store Find	ег		
Sear	reh by Product	Sear	rch by Location
Product Typ	e:	City:	
Lowfat Straw	berry Greek-Style Yogurt 🔻		
Options:	Any ▼	State:	-
Zip Code:		Distance:	Less than 10 Miles ▼
	Submit		Submit

If you can't find what you're looking for, ask your local store manager to begin carrying Cabot products.

Nutrition Facts

Serving Size 1 Cup (226g) Servings Per Container 2

Amount Per Serving Calories 220	Calories from Fat 35
Culones 220	
	% Daily Value
Total Fat 4g	6%
Saturated Fat 2.5g	12%
Polyunsaturated Fat g	
Trans Fat 0g	
Cholesterol 25mg	9%
Sodium 105mg	4%
Total Carbohydrate 33g	11%
Dietary Fiber 0g	
Sugars 32g	
Protein 18g	
Vitamin A 200/	Vitamia C 250/
Vitamin A 20%	Vitamin C 35%
Vitamin D 20%	Vitamin E 20%
Calcium 35%	Iron 6%

Percent Daily Values are based on a 2,000 calorie

Your daily values may be higher or lower depending on your calorie needs.

Ingredients

Lowfat yogurt [Pasteurized milk, skim milk, whey protein concentrate, milk protein concentrate, live active yogurt cultures (L. bulgaricus and S. thermophilus), enzymes, Vitamins A,C,D,E], Strawberry flavoring [Sugar, strawberries, water, modified corn starch, natural flavors, fruit and vegetable juice (color)]















Classic Cheddar Specialty Aged Cheddar Flavored Cheddar Reduced Fat Cheddar Other Cheeses Greek Yogurt Other Products

Quicklinks Store Finder Cabot e-Newsletter FAQs HUNGRY? SEARCH RECIPES BY MEAL TYPE Select a category

VERMONT SHOWCASE

Cheese

- Classic Cheddar
- Specialty Aged Cheddar
- Flavored Cheddar
- Reduced Fat Cheddar
- Other Cheeses

Greek Yogurt

Plain
Lowfat Plain
Lowfat Blueberry
Lowfat Vanilla Bean
Lowfat Strawberry
Lowfat Black Cherry
Lowfat Peach

Other Products

- Cream Cheese
- Whipped Cream
- Cottage Cheese
- ▶ Dips
- Sour Cream
- Butter
- Nonfat Yogurt

Plain Lowfat Plain Lowfat Blueberry Lowfat Vanilla Bean Lowfat Strawberry Lowfat Black Cherry Lowfat Peach

Lowfat Black Cherry Greek-Style Yogurt

Enjoy a modern, healthy version made from 2% low-fat milk, of this deep, dark and delicious Black Cherry flavor. Too good to pass up!

f Like 0



Product Options

1 LB

Store Finder	
Search by Product	Search by Location
Product Type:	City:
Lowfat Black Cherry Greek-Style Yogu	▼
Options: Any	→ State: →
Zip Code:	Distance: Less than 10 Miles
Submit	Submit

If you can't find what you're looking for, ask your local store manager to begin carrying Cabot products.

Nutrition Facts

Serving Size 1 Cup (226g) Servings Per Container 2

Amount Per Serving	
Calories 250	Calories from Fat 40
	% Daily Value
Total Fat 4g	6%
Saturated Fat 2.5g	13%
Polyunsaturated Fat 0g	
Mono Saturated Fat 0g	
Trans Fat 0g	0%
Cholesterol 25mg	8%
Sodium 115mg	5%
Total Carbohydrate 36g	12%
Potassium 0mg	0%
Dietary Fiber 0g	
Sugars 30g	
Protein 18g	36%
Vitamin A 20%	Vitamin B 0%
Vitamin C 20%	Vitamin D 20%
Vitamin E 0%	Calcium 45%
Iron 4%	Riboflavin 0%

Percent Daily Values are based on a 2,000 calorie diet.

Your daily values may be higher or lower depending on your calorie needs.

Ingredients

Lowfat yogurt (Pasteurized milk, skim milk, why protein concentrate, milk protein concentrate, live active yogurt cultures (Acidophilus, Bifidus, L. bulgaricus and S. thermophilus), enzymes, Vitamins A, C, D, E), black cherry flavoring (fructose, cherries, water, sugar, modified corn starch, natural flavors, pectin, oligofructose, citric acid).















Classic Cheddar Specialty Aged Cheddar Flavored Cheddar Reduced Fat Cheddar Other Cheeses Greek Yogurt Other Products

Quicklinks Store Finder Cabot e-Newsletter FAQs HUNGRY? SEARCH RECIPES BY MEAL TYPE Select a category

VERMONT SHOWCASE

Cheese

- Classic Cheddar
- Specialty Aged Cheddar
- Flavored Cheddar
- Reduced Fat Cheddar
- Other Cheeses

Greek Yogurt

Plain

Lowfat Plain
Lowfat Blueberry
Lowfat Vanilla Bean
Lowfat Strawberry
Lowfat Black Cherry
Lowfat Peach

Other Products

- Cream Cheese
- Whipped Cream
- Cottage Cheese
- ▶ Dips
- Sour Cream
- ▶ Butter
- Nonfat Yogurt

Plain Lowfat Plain Lowfat Blueberry Lowfat Vanilla Bean Lowfat Strawberry Lowfat Black Cherry Lowfat Peach

Lowfat Peach Greek-Style Yogurt

Say goodbye to bland and discover the full, rich flavors of our Greek-Style Yogurt! Enjoy this peach-y delicious lowfat snack or lunch made with 2% milk. So thick, creamy and decadently delicious you won't believe it's only 2% milkfat.

f Like **< 0**

Product Options



Shop Online

1 LB			
ecipes			

Recipes		
Store Finder		
Search by Product	Search by Location	
Product Type:	City:	
Lowfat Peach Greek-Style Yogurt	•	
Options: Any	State:	
Zip Code:	Distance: Less than 10 Miles ▼	
Submit	Submit	

If you can't find what you're looking for, ask your local store manager to begin carrying Cabot products.

Nutrition Facts

Serving Size 1 Cup (226g) Servings Per Container 2

Amount Per Serving			
Calories 240	Calories from Fat 40		
	% Daily Value		
Total Fat 4g	6%		
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Sugars 28g			
Protein 18g	36%		
Vitamin A 20%	Vitamin B 0%		
Vitamin C 20%	Vitamin D 20%		
Vitamin E 20%	Calcium 45%		
Iron 4%	Riboflavin 0%		

Percent Daily Values are based on a 2,000 calorie diet.

Your daily values may be higher or lower depending on your calorie needs.

Ingredients

Lowfat yogurt (pasteurized milk, skim milk, whey protein concentrate, milk protein concentrate, live active yogurt cultures (acidophilus, bifidus, L. bulgaricus and S. thermopiles), enzymes, Vitamins A, C, D, E, Peach flavoring (sugar, peaches, water, modified corn starch, natural flavors, annatto).















AGRI-MARK WHEY PROTEIN CONCENTRATE 80

Agri-Mark Whey Protein Concentrate 80 (WPC 80) is a homogeneous, free-flowing whey protein concentrate powder manufactured from fresh sweet whey and spray dried to 80% protein on a dry basis. It is used in infant formulas, sports nutrition, low carbohydrate diet formulas, yogurt, ice cream, sausage and meat products, and egg albumen replacer in bakery products. It provides an excellent source of undenatured dairy protein to a variety of processed and special dietary food formulations. Agri-Mark WPC 80 is light cream to cream in color with a bland and clean odor and flavor.

Analytical Information	Specification	Typical
Protein (N * 6.38) dry basis	80.0% minimum	>81.0%
Fat	8.5% maximum	<5.5%
Ash	4.5% maximum	<3.0%
Moisture	6.0% maximum	<5.3%
Carbohydrates		<10.0%
pH (10% solution)	6.0 minimum	6.3
Scorched particles	15.0 mg maximum	7.5 mg

Whey Processing

Control Room

Niro Ultrafiltration Systems

Microbiological Information

Standard plate count	30,000/g maximum	<500/g
Coliform	30/g maximum	<10/g
Yeast	50/g maximum	<30/g
Mold	50/g maximum	<30/g
Salmonella (in 750 grams)	Negative	Negative

Packaging and Storage Information

Available in 20 kg net weight Kraft paper bags with a polyethylene liner or 1000 pound (454 kg net) weight superbags. Dairy products are hygroscopic and will absorb odors. Storage in a cool, dry environment below 85°F (29°C) and below 65% relative humidity is recommended for maximum shelf life stability.

The information contained herein is offered solely for informational purposes and is, to the best of our knowledge, correct. No warranties, expressed or implied, are made. Purchaser is solely responsible for ensuring that product supplied is in conformity with all relevant food legislation and should determine whether suggested data, formulations or procedures are suitable for their own purposes. It is recommended that product be laboratory evaluated prior to inclusion into other products. Any information provided should not be construed as permission for violation of patent and/or trademark rights.

The information contained herein is offered solely for informational purposes and is, to the best of our knowledge, correct. No warranties, expressed or implied, are made. Purchaser is solely responsible for ensuring that product supplied is in conformity with all relevant food legislation and should determine whether suggested data, formulations or procedures are suitable for their own purposes. It is recommended that product be laboratory evaluated prior to inclusion into other products. Any information provided should not be construed as permission for violation of patent and/or trademark rights.

BURSOR FISHER

369 LEXINGTON AVENUE 10TH FLOOR NEW YORK, NY 10017 www.bursor.com

SCOTT A. BURSOR Tel: 212-989-9113 Fax: 212-989-9163 scott@bursor.com

August 30, 2012

Via Certified Mail - Return Receipt Requested

Cabot Creamery Cooperative, Inc. 1 Home Farm Way Montpelier, VT 05602

Re: Notice Letter Pursuant to California Civil Code § 1782 and Cal. Com. Code § 2607.

To Whom It May Concern:

This letter serves as a preliminary notice and demand for corrective action by Cabot Creamery Cooperative, Inc. ("Cabot") California Civil Code § 1782 and Cal. Com. Code § 2607(3)(A), on behalf of our client, Timothy Smith, and all other persons similarly situated.

This notice concerns Cabot Greek, which Cabot markets as "Greek-Style Yogurt." Packages of Cabot Greek are affixed with the label "LOWFAT YOGURT." However, Cabot Greek contains Milk Protein Concentrate ("MPC"), which is prohibited by the Standards of Identity for yogurt products promulgated by the U.S. Food and Drug Administration ("FDA"). *See* 21 C.F.R. §§ 131.200, 131.203. Therefore, Cabot Greek is not yogurt.

Mr. Smith is a purchaser of Cabot Greek. Cabot expressly represented to him that Cabot Greek was yogurt. Cabot breached that express warranty because Cabot Greek is not yogurt. *See* Cal. Com. Code § 2607(3)(A).

We hereby demand that Cabot immediately (1) cease and desist from continuing to label and sell Cabot Greek as "yogurt," (2) issue an immediate recall of any Cabot Greek product bearing false labels representing the product is yogurt; and (3) make full restitution to all purchasers of Cabot Greek of all purchase money obtained from sales thereof.

We also demand that Cabot preserve all documents and other evidence which refer or relate to any of the above-described practices including, but not limited to, the following:

1. All documents concerning the ingredients, formula, and manufacturing process for Cabot Greek;

- 2. All communications with the FDA concerning Cabot Greek or MPC's;
- 3. All documents concerning the advertisement, marketing and/or sale of Cabot Greek; and
- 4. All communications with customers concerning complaints or comments concerning Cabot Greek.

If Cabot contends that any statement in this letter is inaccurate in any respect, please provide us with your contentions and supporting documents immediately upon receipt of this letter.

Very truly yours,

Scott A. Bursor scott@bursor.com

EXHIBIT D

BURSOR FISHER

369 LEXINGTON AVENUE 10TH FLOOR NEW YORK, NY 10017 www.bursor.com

SCOTT A. BURSOR Tel: 212-989-9113 Fax: 212-989-9163 scott@bursor.com

September 4, 2012

Via Certified Mail - Return Receipt Requested

Cabot Creamery Cooperative, Inc. 1 Home Farm Way Montpelier, VT 05602

Re: Notice Letter Pursuant to California Civil Code § 1782 and Cal. Com. Code § 2607.

To Whom It May Concern:

This letter serves as a preliminary notice and demand for corrective action by Cabot Creamery Cooperative, Inc. ("Cabot") California Civil Code § 1782 and Cal. Com. Code § 2607(3)(A), on behalf of our client, Rohit Fedane, and all other persons similarly situated.

This notice concerns Cabot Greek, which Cabot markets as "Greek-Style Yogurt." Packages of Cabot Greek are affixed with the label "LOWFAT YOGURT." However, Cabot Greek contains Milk Protein Concentrate ("MPC"), which is prohibited by the Standards of Identity for yogurt products promulgated by the U.S. Food and Drug Administration ("FDA"). *See* 21 C.F.R. §§ 131.200, 131.203. Therefore, Cabot Greek is not yogurt.

Mr. Fedane is a purchaser of Cabot Greek. Cabot expressly represented to him that Cabot Greek was yogurt. Cabot breached that express warranty because Cabot Greek is not yogurt. See Cal. Com. Code § 2607(3)(A).

We hereby demand that Cabot immediately (1) cease and desist from continuing to label and sell Cabot Greek as "yogurt," (2) issue an immediate recall of any Cabot Greek product bearing false labels representing the product is yogurt; and (3) make full restitution to all purchasers of Cabot Greek of all purchase money obtained from sales thereof.

We also demand that Cabot preserve all documents and other evidence which refer or relate to any of the above-described practices including, but not limited to, the following:

1. All documents concerning the ingredients, formula, and manufacturing process for Cabot Greek;

- 2. All communications with the FDA concerning Cabot Greek or MPC's;
- 3. All documents concerning the advertisement, marketing and/or sale of Cabot Greek; and
- 4. All communications with customers concerning complaints or comments concerning Cabot Greek.

If Cabot contends that any statement in this letter is inaccurate in any respect, please provide us with your contentions and supporting documents immediately upon receipt of this letter.

Very truly yours,

Scott A. Bursor scott@bursor.com

EXHIBIT E

BURSOR FISHER

369 LEXINGTON AVENUE 10TH FLOOR NEW YORK, NY 10017 www.bursor.com

SCOTT A. BURSOR Tel: 212-989-9113 Fax: 212-989-9163 scott@bursor.com

September 6, 2012

Via Certified Mail - Return Receipt Requested

Cabot Creamery Cooperative, Inc. 1 Home Farm Way Montpelier, VT 05602

Re: Notice Letter Pursuant to California Civil Code § 1782 and Cal. Com. Code § 2607.

To Whom It May Concern:

This letter serves as a preliminary notice and demand for corrective action by Cabot Creamery Cooperative, Inc. ("Cabot") on behalf of our client, Misty Johnson, and all other persons similarly situated, arising from breaches of warranty under California law and violations of numerous provisions of California law including the Consumers Legal Remedies Act, Civil Code §1770, including but not limited to subsections (a)(2), (5), (7), and (9).

This notice concerns Cabot Greek, which Cabot markets as "Greek-Style Yogurt." Packages of Cabot Greek are affixed with the label "LOWFAT YOGURT." However, Cabot Greek contains Milk Protein Concentrate ("MPC"), which is prohibited by the Standards of Identity for yogurt products promulgated by the U.S. Food and Drug Administration ("FDA"). *See* 21 C.F.R. §§ 131.200, 131.203. Therefore, Cabot Greek is not yogurt.

Ms. Johnson is a purchaser of Cabot Greek. Cabot expressly represented to her that Cabot Greek was yogurt. Cabot breached that express warranty because Cabot Greek is not yogurt. *See* Cal. Com. Code § 2607(3)(A).

We hereby demand that Cabot immediately (1) cease and desist from continuing to label and sell Cabot Greek as "yogurt," (2) issue an immediate recall of any Cabot Greek product bearing false labels representing the product is yogurt; and (3) make full restitution to all purchasers of Cabot Greek of all purchase money obtained from sales thereof.

We also demand that Cabot preserve all documents and other evidence which refer or relate to any of the above-described practices including, but not limited to, the following:

- 1. All documents concerning the ingredients, formula, and manufacturing process for Cabot Greek;
 - 2. All communications with the FDA concerning Cabot Greek or MPC's;
- 3. All documents concerning the advertisement, marketing and/or sale of Cabot Greek; and
- 4. All communications with customers concerning complaints or comments concerning Cabot Greek.

If Cabot contends that any statement in this letter is inaccurate in any respect, please provide us with your contentions and supporting documents immediately upon receipt of this letter.

Very truly yours,

Scott A. Bursor scott@bursor.com